



DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1960

[Docket No. OSHA-2013-0018]

Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters; Subpart I for Recordkeeping and Reporting Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: OSHA is issuing a final rule amending the Basic Program Elements to require Federal agencies to submit their occupational injury and illness recordkeeping information to the Bureau of Labor Statistics (BLS) and OSHA on an annual basis. The information, which is already required to be created and maintained by Federal agencies, will be used by BLS to aggregate injury and illness information throughout the Federal government. OSHA will use the information to identify Federal establishments with high incidence rates for targeted inspection, and assist in determining the most effective safety and health training for Federal employees. The final rule also interprets several existing basic program elements in our regulations to clarify requirements applicable to Federal agencies, amends the date when Federal agencies must submit to the Secretary of Labor their annual report on occupational safety and health programs, amends the date when the Secretary of Labor must submit to the President the annual report on Federal agency safety and health, and clarifies that Federal agencies must include uncompensated volunteers when reporting and recording occupational injuries and illnesses.

DATES: This final rule becomes effective January 1, 2014.

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SUPPLEMENTARY INFORMATION:

Executive Summary for This Final Rule

A. Purpose

Today's final rule establishes requirements directing Federal agencies to submit their occupational injury and illness recordkeeping information to the Secretary of Labor which will allow (1) BLS to analyze injury and illness data at Federal establishments, and (2) OSHA to better track injury trends at Federal agencies, and to better target inspections at the most hazardous Federal establishments.

B. Summary of Major Provisions

- Revisions to update existing regulatory language: Since the basic program elements were originally published in 1980, changes have occurred that make the existing language out of date.
- The Unites States Postal Service: The Occupational Safety and Health Act of 1970 (OSH Act) was amended to make it applicable to the U.S. Postal Service (USPS) in the same manner as any other private sector employer. Therefore, language in the basic program elements has been modified to indicate that the USPS is not included in the definition of "agency."
- Financial management: The Office of Management and Budget (OMB) circulars referenced in the original regulations are no longer in use. Therefore the language has been revised to reference only relevant OMB regulations and documents.

- Abatement of unsafe or unhealthful working conditions: Abatement requirements have been changed to follow private sector procedures.
 - Records retention: A section of the basic program elements addressing retention and access of employee records was inadvertently deleted in a prior revision and is now being reinserted in this rulemaking.
 - Changes are being made to require Federal agencies to annually submit their OSHA required injury and illness data.
 - Modifying dates to reflect the collection of calendar year data, rather than fiscal year data: We have modified the due date when Federal agencies must submit their annual report on safety and health to OSHA, and the report from OSHA to the President, to allow for the use of OSHA required injury and illness data.
 - Submission of the OSHA required injury and illness data: We are stipulating that the Secretary of Labor will be collecting the OSHA required injury/illness data annually.
- Clarification is also provided on how to identify the injuries/illnesses of volunteers, the calculation of the total number of hours worked by uncompensated volunteers, and that OMB job series numbers should be used to identify job titles.

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I. Background: Federal Agency Safety and Health Programs.

Section 19 of the Occupational Safety and Health Act (the “OSH Act”) (29 U.S.C. 668) includes provisions to ensure safe and healthful working conditions for Federal sector employees. Under that section, each Federal agency is responsible for establishing and maintaining an effective and comprehensive occupational safety and health program consistent with the standards promulgated by OSHA under Section 6 of the OSH Act. Executive Order 12196, Occupational Safety and Health Programs for Federal Employees, issued February 26, 1980, prescribes additional responsibilities for the heads of Federal agencies, the Secretary of Labor, and the General Services Administration. Among other things, the Secretary of Labor, through OSHA, is required to issue basic program elements with which the heads of agencies must operate their safety and health programs. These basic program elements are set forth at 29 CFR Part 1960. Section 19 of the OSH Act, the Executive Order, and the basic program elements under 29 CFR Part 1960 apply to all agencies of the Executive Branch except military personnel and uniquely military equipment, systems, and operations.

II. Injury and Illness Recordkeeping in the Federal Sector.

Pursuant to Section 19(a) of the OSH Act, each head of a Federal agency is responsible for keeping adequate records of all occupational injuries and illnesses. Section 1-401(d) of Executive Order 12196 provides the Secretary with authority to prescribe recordkeeping and reporting requirements for Federal agencies. On October 21, 1980, OSHA issued a final rule addressing Federal agency safety and health programs which included occupational injury and illness recordkeeping requirements at 29 CFR Part 1960, Subpart I, Recordkeeping and Reporting Requirements, (45 FR 69796).

On January 19, 2001, OSHA issued a revised system of injury and illness recordkeeping requirements for private sector employers at 29 CFR Part 1904, (66 FR 5916). The revised recordkeeping rules were designed, among other things, to provide better information about the incidence of occupational injuries and illnesses; simplify the recordkeeping system for employers; promote improved employee awareness and involvement in the recording and reporting of injuries and illness; and permit the increased use of computers and telecommunications in carrying out OSHA-required recordkeeping.

By 2004, it was clear to OSHA that significant inconsistencies existed between the private sector and the Federal Government's recording and tracking of occupational injuries and illnesses. In order to make the private sector and Federal sector systems consistent, OSHA, on November 26, 2004, issued a final rule to amend the occupational injury and illness recordkeeping requirements applicable to Federal agencies, (69 FR 68793). OSHA's final rule adopted applicable provisions of 29 CFR Part 1904, which made the recording and reporting requirements for the Federal sector essentially identical to those for the private sector.

III. OSHA's Injury and Illness Recordkeeping System.

OSHA's regulation at 29 CFR 1904, Recording and Reporting Occupational Injuries and Illnesses, was one of the first regulations promulgated by OSHA. First issued in 1971, this regulation requires employers to record information on the occurrence of injuries and illnesses in their workplaces if the injuries and illnesses meet one or more of certain recording criteria. In accordance with the OSH Act, OSHA requires employers to record work-related injuries and illnesses that involve death, loss of consciousness, days away from work, restricted work activity or job transfer, medical treatment beyond first aid, or diagnosis of a significant injury or illness by a physician or other licensed health care professional.

The OSHA recordkeeping system consists of three forms. First, employers must maintain a log (OSHA Form 300, commonly referred to as the "OSHA log," or an equivalent form) that lists each injury and illness that occurred in each establishment during the year. The log is available to employees, former employees, and their representatives. For each case on the log, the employer also prepares a supplementary record (OSHA Form 301, or an equivalent), that provides additional details about the injury or illness. A summary of the log (OSHA Form 300A, or an equivalent) is prepared by the employer and posted in the workplace from February 1 to April 30 of the year following the year to which the records pertain. As noted in the November 2004 recordkeeping final rule, Federal agencies may choose to use the Office of Workers' Compensation Program (OWCP) Forms CA-1, CA-2 and CA-6¹ for the purpose of complying with OSHA's recordkeeping requirements (excluding contractors), as long as Federal agencies include the additional OSHA-required information for the OSHA 301 form. If agencies use

¹ CA-1, Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation; CA-2, Notice of Occupational Disease and Claim for Compensation; CA-6, Official Superior's Report of Employee's Death.

these forms for OSHA recordkeeping requirements, they must ensure all OSHA required fields on these forms are complete, whether or not they are required by OWCP.

Occupational injury and illness records, and the statistics based on them, have several desired functions or uses. One use is to provide information to employers and employees about the kinds of injuries and illnesses occurring in the workplace, and the hazards that cause or contribute to them. Injury and illness statistics play an important role in shaping an employer's injury and illness prevention program, and investigation into patterns of injuries can provide information useful in abating hazards and preventing additional injuries from occurring.

The records are also an important source of information for OSHA. During the initial stages of an inspection, an OSHA representative reviews the recordkeeping data for the establishment as an aid to focusing the inspection effort on safety and health hazards. OSHA also uses establishment-specific injury and illness information to help target its intervention efforts on the most dangerous worksites. Injury and illness statistics help OSHA identify the scope of occupational safety and health problems and decide whether regulatory intervention, compliance assistance, or other measures are warranted.

Finally, the records required by the OSHA recordkeeping regulation are the source of information for the BLS-generated national statistics on workplace injuries and illnesses, including information on the source, nature, and type of these injuries and illnesses. BLS makes the aggregate information available both for research purposes and for public information. BLS has published occupational safety and health statistics since 1971, and this information charts the magnitude and nature of injury and illness problems across the country.

IV. OSHA Access to and Use of Recordkeeping Information.

1. Private sector

In the private sector, OSHA has long had in place rules pertaining to Agency access to information concerning worker safety and health. Section 8 of the OSH Act provides OSHA with the authority to issue regulations and standards requiring employers to make, keep and preserve, and make available to OSHA, records relating to the OSH Act. OSHA's regulation at 29 CFR 1910.1020, Access to employee exposure and medical records, provides access to exposure and medical records to employees, their designated representatives, and OSHA. Several of OSHA's substance-specific health standards, such as those for occupational exposure

to benzene and lead, include requirements for employee and OSHA access to information required to be maintained by those standards.

With respect to OSHA injury and illness recordkeeping, Section 1904.40 requires employers to provide a complete copy of records kept under Part 1904 to an authorized government representative when the representative asks for such records during a workplace safety and health inspection. Section 1904.40(b)(1) states that authorized government representatives who have a right to obtain Part 1904 records are a representative of the Secretary of Labor conducting an inspection or investigation under the OSH Act, a representative of the Secretary of Health and Human Services (including the National Institute for Occupational Safety and Health (NIOSH) conducting an investigation under Section 20(b) of the OSH Act, or a representative of a State agency responsible for administering a State plan under Section 18 of the OSH Act.

Section 8(c) of the OSH Act also gives the Secretary the authority to prescribe regulations requiring employers to make periodic reports on work-related deaths, injuries and illnesses. For purposes of OSHA injury and illness recordkeeping, periodic reporting from a subset of employers is accomplished through the OSHA Data Initiative (ODI), and the Annual Survey of Occupational Injuries and Illnesses conducted by BLS. Although OSHA and BLS collect injury and illness information, collection of the information is conducted through different means and used for different purposes.

Under Section 1904.41, each year OSHA sends injury and illness survey forms to employers in certain high-hazard industries. In any year, some employers will receive a survey form, and others will not. Employers are not required to send injury and illness recordkeeping information to OSHA unless they receive a survey form.

Employers that receive a survey form submit information on the number of workers employed, the number of hours worked by employees, and requested information from records created and maintained under Part 1904. The information produced from the survey includes incidence rates, as well as the number of occupational injuries and illnesses. Incidence rates relate the number of injuries and illnesses to a common base of exposure. The rate shows the number of injuries and illnesses per 100 workers. This common base allows for accurate cross-industry comparisons, trend analysis over time and comparisons among firms regardless of size.

The establishment-specific data collected by OSHA are used to administer OSHA's various programs and to measure the performance of those programs at individual workplaces.

Section 1904.42 establishes requirements for employers, when asked, to complete and submit an annual survey from BLS. BLS collects data from a statistical sample of employers in all industries and across all size classes, using the data to compile occupational injury and illness statistics for the Nation. BLS gives each respondent a pledge of confidentiality (as it does on all BLS surveys), and the establishment-specific injury and illness data are not shared with the public, OSHA or other government agencies.

2. Federal sector

Section 19 of the OSH Act provides the Secretary of Labor with access to occupational injury and illness records and reports kept and filed by Federal agencies "unless those records and reports are specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy, in which case the Secretary of Labor shall have access to such information as will not jeopardize national defense or foreign policy." Section I-201(j) of Executive Order 12196 requires the head of each agency to operate an occupational safety and health management information system, which includes the maintenance of records required by the Secretary of Labor. Section I-201(l) also requires the head of each agency to submit to the Secretary of Labor an annual report on the agency occupational safety and health program that includes information the Secretary prescribes. Section 401(d) of the Executive Order states that the Secretary of Labor shall prescribe recordkeeping and reporting requirements.

V. Federal Agency Injury and Illness Data Submission.

Today's final rule establishes requirements directing Federal agencies to submit their occupational injury and illness recordkeeping information to the Secretary. The final rule does not require Federal agencies to create or maintain any new records. Instead, the final rule amends the basic program elements at 29 CFR 1960 by adding Section 1960.72, and requires Federal agencies to submit information included on the three OSHA recordkeeping forms to BLS. BLS will then electronically transmit the data from these forms to OSHA.

Under the final rule, by May 1 of each year, Federal agencies must submit their injury and illness recordkeeping data from the previous calendar year directly to BLS. The May 1

deadline for submission of the previous calendar year's information is based on the posting requirements in Section 1904.32. That Section requires employers to post their Annual Summary from the previous calendar year from February 1 through April 30. During the posting period, employees have the opportunity to review the information, and this review may result in new or revised entries about injuries and illnesses at the establishment. Therefore, the May 1 submission deadline should allow for the submission of more accurate and complete recordkeeping information.

BLS is leading the collection effort established by today's final rule because it already has a system in place to collect injury and illness data from the private sector. However, the final rule includes two important differences from the private sector data collection system. First, unlike the private sector collection effort, which is a statistical sample, today's final rule requires the submission of all Federal agency injury and illness data from each Federal establishment. Second, unlike the private sector BLS survey, which is conducted solely for statistical purposes and not shared with OSHA, the BLS collection of federal agency data from the OSHA forms will be electronically transmitted to OSHA.

Individually identifiable information will not be made public. Establishment data will not be published if such information will result in a breach of employee privacy. DOL will carefully review all information before it is released, to ensure that privacy is not violated.

1. How the data will be used by BLS

The submitted information will be used by BLS when developing and analyzing Federal Government injury and illness statistics. In the private sector and State and local government, BLS collects injury and illness data from employers through the Annual Survey of Occupational Injuries and Illnesses. An employer selected by BLS to participate in the Annual Survey must provide information about employee injuries and illnesses recorded on the employer's OSHA forms. BLS collects the information from a statistical sample in all industries and across all size classes, and uses the data to estimate the number of work-related injuries and illnesses across the Nation, as well as a measure of the frequency (rate) at which they occur. The BLS survey, which is conducted solely for statistical purposes, is not directly related to OSHA's enforcement of workplace safety and health requirements.

BLS will use the data required to be submitted by today's final rule to calculate injury and illness incidence rates for the Federal sector. BLS develops incidence rates by industry, establishment size, and many other case types, and Federal agencies will be able to compare their incidence rates with national averages for similar types of organizations. The information will be aggregated from other Federal agencies and similar establishments in the private sector and State and local government to identify injury and illness patterns among industries and occupations.

2. How the data will be used by OSHA.

OSHA will use the submitted information for a variety of purposes, including targeting of Federal workplaces for OSHA inspection; deployment of resources for safety and health training; periodic assessment of the basic program elements; development of information for promulgating, revising or evaluating OSHA standards and regulations; evaluating and analyzing Presidential initiatives addressing injury and illness rate reduction in the Federal Government; and OSHA evaluations. By using the establishment-specific information, OSHA will be able to more effectively allocate its resources to focus on the most hazardous Federal establishments.

In the past, OSHA used statistical data provided by the OWCP to target safety and health inspections of Federal agency workplaces. However, the OWCP data is based on whether a case is compensable, and not on whether a case is recordable under OSHA's injury and illness recordkeeping system. Because OSHA has relied on OWCP statistical data, the Agency has not had an effective means of identifying and targeting the most hazardous Federal establishments for comprehensive safety and health inspection. On the other hand, occupational injury and illness records provide safety and health information about specific Federal establishments, including information about the location, equipment, materials or chemicals used at the time of an injury or illness.

Moreover, OSHA uses injury and illness recordkeeping information collected from the OSHA Data Initiative (ODI) when it targets private sector employers for safety and health inspection. By analyzing the recordkeeping data required to be submitted by today's final rule, OSHA will be relying on the same type of information for targeting Federal establishments as it currently uses to make such determinations in the private sector.

OSHA also intends to incorporate the collected information into the Secretary of Labor's Annual Report to the President on Federal Agency Safety and Health. Section 19(a)(5) of the OSH Act and Executive Order 12196 require Federal agencies to make an annual report to the Secretary on occupational accidents and injuries, as well as the Federal agency's program for providing safe and healthful places and conditions of employment. The OSH Act and Executive Order also direct the Secretary to submit an annual summary report to the President on the status of Federal agency occupational safety and health. Historically, when preparing the report for the President, OSHA has included information furnished by OWCP when compiling statistical data concerning Federal agency injury and illness case rates and lost time case rates. In the future, OSHA intends to use the occupational safety and health related data collected from the submitted data when preparing the annual report for the President.

3. Options for submitting the data.

Under the final rule, Federal agencies will submit their injury and illness data using BLS internet data collection facilities. At present, Federal agencies have three options for submitting their OSHA injury and illness recordkeeping information. First, Federal agencies may submit their annual data securely through an internet system with individual password protection, as about 80 percent of the private- and governmental-establishments do today. Second, Federal agencies with existing electronic recordkeeping data collection systems can be provided with a file structure and file transfer protocol to allow them to transmit all of their injury and illness information to BLS. Finally, Federal agencies without existing electronic recordkeeping systems may choose to receive a database structure from the Department of Labor they can use to collect and track their OSHA recordable injuries and illnesses. The current available database structure, known as ECOMP, will require Federal agencies to electronically file their OWCP CA-1 and CA-2 forms. In addition, it will allow Federal agencies to generate their own injury and illness recordkeeping forms. Those agencies may then use the BLS internet system or, like the second option, use a file structure and file transfer protocol to electronically transmit the data to BLS through ECOMP.

BLS collects injury and illness data from private sector employers and state and local governments under a pledge of confidentiality in accordance with Confidential Information

Protection and Statistical Efficiency Act of 2002 (CIPSEA), Title 5 of Public Law 107-347, and other applicable Federal law. This pledge of confidentiality does not extend to Federal agencies. BLS will electronically transfer Federal agency data from the OSHA forms to OSHA annually, after the end of each collection cycle.

OSHA intends to develop specific instructions and guidance for Federal agencies, which will be issued annually through written memoranda, on how to submit the data to BLS using the available options. OSHA also intends to develop and maintain a page on its website listing the options for submitting the information, as well as specific instructions and guidance included in the annual memorandum to Federal agencies. The annual memorandum and web page will also serve to notify Federal agencies about the development of new technologies or options for submitting injury and illness information.

VI. Identification and Listing of Federal Establishments.

Section 1904.46 of OSHA's private sector recordkeeping regulation includes a definition of the term "establishment." When the injury and illness recordkeeping requirements for Federal agencies were revised in November 2004, OSHA did not incorporate the Part 1904 definition of establishment. Instead, OSHA retained the definition of establishment for Federal agencies in 29 CFR 1960.2(h).

The term "establishment" is defined at 29 CFR 1960.2(h) as "a single physical location where business is conducted or where services or operations are performed. Where distinctly separate activities are performed at a single physical location, each activity is to be treated as a separate establishment. Typically, the term establishment refers to a field activity, regional office, area office, installation, or facility."

Federal agencies are responsible for keeping a separate OSHA 300 Log (or equivalent), and preparing a single OSHA 300-A Annual Summary for each establishment. (They are also required to keep case details on the OSHA 301 form.) Establishment-specific records are a key component of the recordkeeping system because each separate record represents the injury and illness experience of a given location, and therefore reflects the particular circumstances and hazards that led to the injuries and illnesses at that workplace.

Since 2004, some uncertainty has developed concerning the definition of establishment and its application to Federal agencies. Federal agencies face unique challenges in determining

whether specific workplaces meet the definition of “establishment” in Section 1960.2(h). For example, in some cases, a single Federal building may house several different Federal agencies, which in turn may have several sub-agencies, divisions or offices. Federal agencies may also establish temporary or short-term offices or workplaces during a given year. In addition, Federal employees may work at multiple locations, at a regional or satellite office, or from home.

For Federal agency OSHA recordkeeping, major organizational units with distinct lines of authority are considered separate establishments. Each Federal department has an organizational structure consisting of agencies, bureaus, or other components that come under the line of authority of an Assistant Secretary, Under Secretary, Assistant Administrator, or similar level. These agencies, bureaus or components are considered major organizational units of a department.

The definition of establishment for Federal agencies at 29 CFR 1960.2(h) includes the phrase: “where distinctly separate activities are performed at a single physical location.” This definition means that each major organizational unit, such as agencies, bureaus or similar components within a Department, is considered an establishment, even if they occupy the same building. For example, the OSHA, the Employment and Training Administration and the Employee Benefits Security Administration are all agencies within the Department of Labor (DOL), and are housed in DOL’s Frances Perkins Building. Even though they occupy the same building, these agencies are considered separate establishments for OSHA recordkeeping. This analysis would apply to major organizational units within national, regional or area buildings.

On the other hand, lower organizational units or offices within an agency or bureau located at the same physical location are not separate establishments. For example, the Directorate of Enforcement Programs and Office of Occupational Medicine are both OSHA units located in the DOL Frances Perkins Building, but they are not major organizational units, and therefore are not considered separate establishments.

Other individual Federal agency workplaces with separate physical locations would also be considered separate establishments. For example, OSHA has Regional and Area offices in cities throughout the United States. Even though the Regional and Area offices are part of a major organizational unit (i.e., OSHA), since these offices are at separate locations, they would each be considered a separate establishment. Likewise, Federal agencies with several physical locations within the same city or geographic region are separate establishments. For example,

the Civil Rights Division within the U.S. Department of Justice (DOJ) has offices in various buildings located several miles apart in Washington, D.C. Even though the offices are all within the same agency (i.e., the Civil Rights Division of DOJ), because they are at separate physical locations, they would be considered separate establishments for OSHA recordkeeping purposes.

Section 1904.30 addresses the procedures to be followed when recording injuries and illnesses occurring in separate establishments operated by the same employer. Section 1904.30(a) states that employers are required to keep separate OSHA 300 Logs for each establishment expected to be in operation for one year or longer. Section 1904.30(b)(1) provides that for short-term establishments, i.e., those that will exist for less than one year, employers are required to keep injury and illness records, but are not required to keep separate OSHA 300 Logs. Instead, employers may keep one OSHA 300 Log covering all short-term establishments, or they may include the short-term establishment records in logs that cover individual company divisions or geographic regions. Federal agencies have the same option when recording injuries and illnesses at short-term establishments.

In some cases, Federal employees work at several different locations, or do not work at any establishment. Section 1904.30(b)(3) provides that each employee must be linked, for recordkeeping purposes, to one of the employer's establishments. This means that all of the employee's injuries or illnesses must be recorded on either his or her home establishment's OSHA 300 Log, or on a general OSHA 300 Log for short-term establishments. The provision ensures that all employees are included in a Federal agency's records.

1. Federal employees visiting or working at other Federal establishments.

Under Section 1904.30(b)(4), if an employee is injured or made ill while visiting or working at another of the employer's establishments, then the injury or illness must be recorded on the 300 Log of the establishment where the injury or illness occurred. For the vast majority of cases, the place where the injury or illness occurred is the most useful recording location. (See 66 FR6037). The events or exposures that caused the case are most likely to be present at that location, so the data are most useful for analysis of that location's records. If cases were always recorded at the employee's home base, the injury or illness information would be disconnected from the place where the event or exposure took place, and where analysis of the data may help

reveal a workplace hazard. Of course, if the injury or illness occurs at another employer's workplace, or while the employee is in transit, the case would be recorded on the OSHA 300 Log of the employee's home establishment.

For Federal agency recordkeeping purposes, each Department or Bureau is considered the Federal employee's employer, and injuries or illnesses occurring at other Federal Department facilities would be recorded on the employee's home establishment's OSHA 300 Log. For example, if an employee of the Department of Labor is either visiting, or working under the supervision of his or her own agency at a Department of Justice facility, and is injured or made ill, the case would be recorded on the employee's home DOL establishment OSHA 300 Log. Of course, as discussed above, if the DOL employee in this example is being supervised by DOJ employees on a day-to-day basis, and is injured or made ill, the case would be recorded on the DOJ's establishment log.

Injuries and illnesses occurring at facilities operated by the same Department would be recorded on the OSHA Log where the injury or illness took place. For example, if an employee from DOL/OSHA were either visiting or working at a DOL/Mine Safety and Health Administration (MSHA) facility, and was injured or made ill, the case would be recorded on the DOL/MSHA Log. Again, in this example, since the Department of Labor is considered the OSHA employee's employer, the case would be recorded on the log where the injury or illness took place.

2. Federal employees that work from home.

When a Federal employee telecommutes, the employee's home is not a separate establishment for recordkeeping purposes, and a separate OSHA 300 Log is not required. For these workers, the worker's establishment is the office to which they report, receive direction or supervision, collect pay, and otherwise stay in contact with their agency, and it is at this establishment where the log is kept.

Agencies should keep in mind that injuries/illnesses that take place while an employee is working from home are not automatically presumed work-related. Work-relationship must be established by demonstrating that the employee's work activity is a discernible cause of the injury/illness.

Section 1904.5(b)(7) addresses the work-relatedness of injuries/illnesses that take place at home. When an employee is working from home on federal agency business, and reports an injury/illness to his or her supervisor, and the employee's work activity caused or contributed to the injury/illness, the case is considered work-related and must be further evaluated to determine whether the case meets any of the recording criteria (i.e., the injury resulted in medical treatment, days away from work, work restrictions etc.). If the injury/illness at home is related to non-work activities, or the general home environment, the case is not work-related. See, the preamble to the final rule revising OSHA's recordkeeping regulation 66 FR 5915 at 5962 for examples of injuries/illnesses at home that are work-related and non-work-related.

3. Listing of Federal establishments.

In order to effectively target Federal workplaces for safety and health inspection, OSHA needs to be able to identify, collect, and track the injury and illness data from each Federal establishment. Today's final rule adds a new basic program element at 29 CFR 1960.72(c) to require each Federal agency to provide OSHA with a comprehensive listing of their establishments, as defined by 29 CFR 1960.2(h), by May 1, 2014. The list must include the department/agency affiliation, a street address, city, state and zip code for each establishment. Federal agencies are also responsible for updating the list when they submit their annual report to the Secretary on occupational safety and health.

The new basic program element at Section 1960.72(c) also requires Federal agencies to provide the North American Industry Classification System (NAICS) code for each of the establishments included on their list. NAICS is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. economy. NAICS was developed under the auspices of the Office of Management and Budget (OMB), and adopted in 1997 to replace the Standard Industrial Classification (SIC) system. It was developed jointly by the United States, Canada, and Mexico to allow for a high level of compatibility in business statistics among the North American countries.

The NAICS information will be used by BLS to compile and analyze injury and illness statistical information for the Federal sector. The NAICS information is also important for

OSHA and BLS when comparing Federal agency injury and illness information with the private sector or State and local government.

Federal agencies should determine NAICS codes based on the activities in their given establishments. As noted in the NAICS Manual, “In general, ownership is not a criterion for classification in NAICS. Therefore, government establishments engaged in the production of private-sector-like goods and services should be classified in the same industry as private-sector establishments engaged in similar activities.” The official 2012 NAICS Manual is available in print and on CD-ROM from the National Technical Information Service (NTIS) at (800) 553-6847, or through the NTIS website at <http://www.ntis.gov>.

VII. Uncompensated Volunteers and Federal Service.

In general, Federal agencies are prohibited from accepting uncompensated volunteer service. (See 31 U.S.C. 1342, Limitation on Voluntary Services). However, some statutes authorize Federal agencies to accept voluntary services during emergencies involving the protection of human life or property (31 U.S.C. 1342); voluntary services to assist disabled Federal employees in performing duties (5 U.S.C. 3102); voluntary services by experts and consultants; and voluntary services by students to further their education (5 U.S.C. 3111). In addition, some Federal agencies, such as the National Park Service and the Forest Service, have specific authorization to accept unpaid services for specific jobs or functions. See Volunteers in the Parks Act of 1969, 16 U.S.C. 18g-18i, and Volunteers in the National Forest Program, 16 U.S.C. 558(a).

OSHA has long considered uncompensated volunteers conducting work for Federal agencies to be covered by the Federal safety and health program. The 1980 final rule which established the basic program elements in 29 CFR 1960.2(g) provides: “The term ‘employee’ as used in this part means any person, other than members of the Armed Forces, employed or otherwise suffered, permitted, or required to work by an ‘agency.’” The preamble to the final rule states that OSHA purposefully used a broad definition of employee so that individuals like volunteers would be protected under Federal agency safety and health programs. The preamble also states that occupational safety and health programs are designed to address hazardous working conditions and that when individuals, such as volunteers, are conducting work activities similar to those performed by other paid employees, they should receive all the protections of the

Federal safety and health program. The definition of “employee” established in the 1980 final rule remains in the current basic program elements for Federal agency safety and health programs set forth at 29 CFR 1960.2(g).

The original injury and illness recordkeeping system for the Federal sector required civilian Executive Branch agencies to record occupational injury and illness information only when such information was also reported to the Office of Workers’ Compensation Programs (OWCP). As such, occupational injuries and illnesses were recordable only if a medical expense was incurred or expected, or if the employee was away from work or on leave without pay (LWOP) or continuation of pay (COP) as a result of the injury or illness. Because the Federal Employees’ Compensation Act (FECA) as amended (5 U.S.C. 1801 et seq.) generally covers uncompensated volunteers, occupational injury and illness information for volunteers was recorded by Federal agencies under the original FECA-based recordkeeping system in Part 1960.

Since publication of the revised Federal sector recordkeeping final rule in November 2004, there has been some uncertainty as to whether Federal agencies should record occupational injury and illness information for volunteer workers. While OSHA has consistently considered volunteers to be within the definition of employee for purposes of 29 CFR Part 1960, the preamble to the private sector Part 1904 recordkeeping final rule issued in 2001 essentially states that unpaid volunteers in the private sector are not covered. In 2004, when OSHA adopted most of the provisions from the Part 1904 system to the Federal sector, the Agency did not intend to exclude individuals performing voluntary services for Federal agencies from the Part 1960, Subpart I, recordkeeping system. As a result, OSHA wishes to make clear that the injuries and illnesses of volunteers conducting work activities for Federal agencies, including both unpaid workers and those individuals receiving minimal compensation for services provided, be recorded under the revised Federal sector recordkeeping system.

A number of Federal agencies use large numbers of both full and part-time volunteers to perform various work activities. For example, in Fiscal Year 2009, approximately 173,000 volunteers conducted 5,700,000 work hours for the National Park Service; 95,248 volunteers conducted 3,014,820 work hours for the Forest Service; and 84,367 volunteers conducted 11,897,208 work hours for the Department of Veterans Affairs. The estimates include unpaid volunteers, as well as those individuals receiving minimal compensation, such as meals or academic credit, for services provided.

In some cases, the work activities conducted by volunteers for Federal agencies are similar to those conducted by full-time paid Federal employees. Volunteers may also be working alongside full-time Federal employees, and may be exposed to the same hazards in the workplace. Depending on the number of volunteers working at a particular Federal establishment, the recording of volunteer injury and illness information may produce a more accurate picture of the effectiveness of the establishment's occupational safety and health program. This is of particular concern to OSHA since occupational injury and illness information is used by safety and health personnel and workers to recognize and eliminate hazards in the workplace.

One reason given as part of OSHA's rationale for amending the Part 1960 recordkeeping requirements in November 2004 was to resolve the incompatibility of data that existed between the private sector and the Federal sector. However, one essential difference still remains between the two recordkeeping systems, specifically as it relates to the treatment of injuries and illnesses to volunteers. As previously discussed, the preamble to the January 2001 private sector Part 1904 recordkeeping final rule essentially states that the injuries and illnesses of unpaid volunteers should not be recorded. In the Federal sector, uncompensated volunteers are considered employees and, therefore, subject to the Part 1904 recordkeeping requirements. In order to allow for valid comparisons of injury and illness data between the private and Federal sectors, it is necessary to be able to segregate the recordable injuries to volunteers in the Federal sector from those to paid Federal civilian workers and contractors who are supervised on a day-to-day basis by Federal agency personnel. Section 1960.73(b) of today's final rule requires that Federal agencies designate a "V" in front of the OPM job title series number when recording the injuries and illnesses of uncompensated volunteers on the OSHA Form 300 or equivalent. (See the discussion below regarding entry of the OPM job series number in Column (c) of the OSHA log). Agencies should use the OPM job series number that most closely relates to the type of work being performed by the volunteer at the time of injury or illness. Section 1960.73(c) of today's final rule also requires that Federal agencies with recordable injuries and illnesses to volunteers separately track the total number of hours worked by volunteers, and report this information to OSHA with their annual recordkeeping data submissions.

VIII. Federal Agency Employees that Supervise Workers.

Section 1904.31 requires employers to record the recordable injuries and illnesses of all their employees, whether classified as labor, executive, hourly, salaried, part-time, seasonal, or migrant workers. Employers are also required to record the recordable injuries and illnesses of all employees they supervise on a day-to-day basis, even if these workers are not carried on the employer's payroll. Day-to-day supervision generally exists when the employer "supervises not only the output, product, or result to be accomplished by the person's work, but also the details, means, methods and processes by which the work objective is accomplished." (See OSHA's January 15, 2004 letter of interpretation to Leann M. Johnson-Koch: http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=24735).

The requirements in Section 1904.31 assign the responsibility for recording and reporting to the employer with the greatest amount of control over the working conditions that led to the injury or illness. OSHA stated in the 2001 preamble to the final rule revising the Part 1904 regulation that the supervising employer is in the best position to obtain the necessary injury and illness information due to its control over the worksite and its familiarity with the work tasks and the work environment. The employer with day-to-day supervision is also in the best position to use the injury and illness data to learn about and correct hazards in the workplace.

For the Federal sector, the requirements in Section 1904.31 mean that Federal agencies are responsible for recording not only the recordable injuries and illnesses of their own Federal employees, but also are responsible for recording the recordable injuries and illnesses of all workers they supervise on a day-to-day basis.

Federal agencies often use outside contractors to provide goods and services, or employ temporary workers from private sector temporary or leasing agencies. For purposes of recording the injuries and illnesses of private sector workers, the key question for Federal agencies is whether they supervise such workers on a day-to-day basis. When making determinations as to whether to record the injuries and illnesses of private sector workers, Federal agencies must use the criteria set forth in Part 1904.31 concerning day-to-day supervision. Of course, if a private contractor or temporary agency is conducting work at a Federal establishment, and provides day-to-day supervision for its employees, the contractor or temporary agency, not the Federal agency, would be responsible for recording injuries and illnesses.

Federal agencies are also responsible for recording the recordable injuries and illnesses of employees from other Federal agencies they supervise on a day-to-day basis. For example, if a Federal employee from the Department of Commerce is detailed to a Department of Transportation (DOT) establishment, the DOT establishment would be responsible for recording any recordable injury or illness if the detailed employee is supervised by DOT personnel on a day-to-day basis. On the other hand, if for example, a Federal employee from the Department of Interior is working at a Department of Treasury establishment, but is still being supervised on a day-to-day basis by his or her home office, the Department of Interior would be responsible for recording injuries and illnesses to their employee.

Because the basic program elements in Part 1960 apply to all Federal establishments worldwide, Federal establishments located in foreign countries are responsible for recording the injuries and illnesses (and calculating the total number of hours worked) of all workers they supervise on a day-to-day basis, even if such individuals are foreign nationals. As with other workers not generally considered “employees” for other purposes, the recording by overseas Federal establishments of injuries and illnesses sustained by foreign nationals they supervise on a day-to-day basis will provide useful information to Federal agencies in their efforts to ensure a safe and healthy workplace for all workers.

1. Recording injuries and illnesses of Federal employees from the same department or bureau.

In the private sector, Section 1904.30(b)(4) addresses the issue of employees who report to one establishment but are injured or made ill at other locations of the same company. Under such circumstances, employers must record cases on the log at the location where the employee became injured or ill. In OSHA’s view, in the majority of cases, the place where the injury or illness occurred is the most useful recording location. The events or exposures that caused the case are most likely to be present at that location, so the data are useful for analysis in that location’s records. If the case is recorded at the employee’s home establishment, the injury or illness data have been disconnected from the place where the case occurred and, therefore, are less likely to be used to identify and correct any hazard. Of course, if an employee is working under the day-to-day supervision of his or her own employer, and the injury or illness occurred at another employer’s establishment, or while the employee was in transit, the case would be recorded on the log of the employee’s home establishment.

For purposes of Section 1904.30, the Department or Bureau is considered the employer of a Federal employee. As such, the Federal establishment where the injury or illness took place is responsible for recording the case on its log when the incident involves a Federal employee from the same Department or Bureau. For example, if an employee from the Department of Labor's OSHA is conducting a safety and health inspection at a Department of Labor Mine Safety and Health Administration (MSHA) establishment, and sustains an injury or illness, the case would be recorded on the log of the MSHA establishment. Under 1904.30(b)(4), even though the OSHA employee is under the day-to-day supervision of his or her own OSHA establishment, because the employee was injured or made ill at an establishment operated by the same employer, the injury or illness would be recorded on the MSHA log.

IX. Other Issues Addressed by Today's Final Rule.

1. Job title on the OSHA form 300.

As noted elsewhere in today's preamble, Federal agencies are required to record each recordable injury and illness on the OSHA 300 Log or equivalent. Column (c) of the OSHA 300 Log asks for the "job title" of the injured or ill employee.

When filling out the OSHA 300 Log or equivalent, Section 1960.73(a) requires Federal agencies to enter all four digits of the employee's job series number in Column (c). For example, agencies should enter "4607 Carpenter" or "0334 Computer Specialist." Recording the job series number on the OSHA 300 Form will help identify occupations across the Federal sector that are experiencing higher injury and illness rates, and allow Federal agencies and OSHA to focus safety and health training on these occupations. When entering the information in Column (c) for private sector contractors they supervise on a daily basis, Federal agencies should enter the four digit job series number that best reflects the tasks undertaken by that employee.

2. Certification of the OSHA 300-A Annual Summary.

Section 1904.32(a) of OSHA's private sector recordkeeping regulation requires employers to review their OSHA 300 Log for completeness and accuracy, and prepare an Annual Summary of the OSHA 300 Log using the OSHA Form 300-A, or an equivalent form. The summary must be certified for accuracy and completeness and posted in the workplace by

February 1 of the year following the year covered by the summary. Section 1904.32(b)(3) provides that a company executive must certify that he or she examined the OSHA 300 Log and that he or she reasonably believes, based on his or her knowledge of the process by which the information was recorded, that the annual summary is correct and complete.

For Federal agencies, the basic program element at Section 1960.67 provides that the person who performs the certification shall be one of the following: (1) the senior management establishment official; (2) the head of the agency for which the senior management official works; or (3) any management official who is in the direct chain of command between the senior establishment management official and the head of the Agency. The note following the basic program element at 1960.67 makes clear that the requirement for certification of Federal agency injury and illness records is necessary because the private sector position titles in 29 CFR 1904 do not correspond with Federal agency position titles for agency executives. In the preamble to the 2004 final rule revising the Federal agency recordkeeping system, OSHA stated that the certifying official is responsible for ensuring that systems and processes are in place, and for holding the recordkeeper accountable, (See 69 FR 68797). This official must certify that he or she has examined the document and reasonably believes, based on his or her knowledge of the process by which the information was recorded, that the annual summary is accurate and complete.

Since 2004, some Federal agencies have had questions about which official is responsible for certifying the Annual Summary. Under the basic program element at 1960.67, the senior management official at the Federal establishment, such as an Area Office Director, would have the authority to certify the summary. Also, the head of the Federal agency, such as the Assistant Secretary or Under Secretary, can certify the summary. Finally, any management official, such as a Regional Administrator, who is in the direct chain of command between the senior establishment official and the head of the Agency, can certify the summary.

It is important to note that while Federal agencies have several options concerning which official can certify the Annual Summary, the individual must still reasonably believe, based on his or her knowledge of the process by which the information in the Log was reported and recorded, that the Log and Summary are “true” and “complete.” Having a reasonable belief that the records are complete and accurate would suggest, at a minimum, that the certifying official is familiar with OSHA’s recordkeeping requirements, and the Federal agency’s recordkeeping

practices and policies, has read the Log and Summary, and has obtained assurance from the staff responsible for maintaining the records that all of OSHA's requirements have been met and all practices and policies followed. In most cases, the certifying official will be familiar with the details of some of the injuries and illnesses that have occurred at the establishment and will, therefore, be able to spot check the 300 Log to see if those cases have been entered correctly.

3. The date for submitting annual reports on Federal agency safety and health.

Section 19(a)(5) of the OSH Act and Section 1-201(l) of Executive Order 12196 require all Federal agencies to submit to the Secretary of Labor an annual report on their agency's occupational safety and health program. The existing basic program element at Section 1960.71(a) requires each Federal agency to submit their report by January 1 of each year, and include a description of the agency's occupational safety and health program for the previous fiscal year, objectives for the current fiscal year, and a summary of the agency's self-evaluation of the effectiveness of their safety and health program. The basic program element also states that the Secretary provide the agencies with the guidelines and format for the reports.

Section 1960.71(b) provides that the Secretary must submit to the President an annual summary report on the status of Federal employee occupational safety and health. The report to the President, which is developed by OSHA's Office of Federal Agency Programs, is partially based on the information submitted by Federal agencies in their annual reports. The basic program element also requires the Secretary to submit the annual report to the President by October 1 of each year.

When OSHA revised the Federal agency occupational injury and illness recordkeeping requirements in November 2004, it established a system based on the private sector requirements in Part 1904, which requires the recording of injuries and illnesses and the maintenance of records on a calendar year basis. Accordingly, in order for Federal agencies to evaluate and submit injury and illness data from the entire calendar year, it is necessary to revise the date when Federal agencies must submit their annual report.

Today's final rule amends the basic program element at 29 CFR 1960.71(a)(1), by revising the date when Federal agencies must submit their annual report to the Secretary from January 1 to May 1. This change is consistent with the timeline established for maintaining records in the Part 1904 recordkeeping system, and will allow Federal agencies to incorporate

calendar year injury and illness information into their annual reports. Today's final rule also amends the basic program element at 29 CFR 1960.71(b) which establishes the date by which OSHA must submit the Secretary of Labor's Report to the President on Federal Department and Agency Safety and Health Program Activity. Section 1960.71(b) is amended to require this report be submitted to the President by January 1, or three months later than the previous due date of October 1, while relying on fiscal year data.

4. Subparts A and B of part 1904 are not applicable to Federal agencies.

The November 2004 final rule revising the reporting and recording requirements for Federal agencies incorporated most of the provisions from the OSHA private sector recordkeeping regulation at 29 CFR Part 1904. The basic program element at Section 1960.66(b) provides: "Except as modified by this subpart, Federal agency injury and illness recording and reporting requirements will be the same as 29 CFR Part 1904 subparts C, D, E, and G".

OSHA did not incorporate Subpart A, Purpose, from the Part 1904 regulation because the basic program element at 29 CFR 1960.66(a) already includes a "Purpose, scope, and general provisions" section applicable to Federal agency recordkeeping. Also, Subpart B, Scope, to Part 1904, which includes Section 1904.1, partial exemption for employees with fewer than 10 employees; Section 1904.2, partial exemption for establishments in certain industries; and Section 1904.3, keeping records for more than one agency, is not applicable to Federal agency recordkeeping. Accordingly, the recordkeeping requirements for Federal agencies set forth at 29 CFR 1960, Subpart I, are applicable to all Federal establishments, including those that employ fewer than ten employees, and those which conduct work activities considered to be in a partially exempt industry.

5. United States Postal Service.

The basic program element at 29 CFR 1960.2(b) provides, in part, that the term "agency" means: "an Executive Department, as defined in 5 U.S.C. 101 or any employing unit or authority of the Executive Branch of the Government." Section 1960.2(b) also states that the term "agency" includes the United States Postal Service (USPS).

In 1998, the Postal Employee Safety Enhancement Act, Public Law 105-241, made the OSH Act applicable to USPS. Under this legislation, the OSH Act applies to USPS in the same

manner as to a private sector employer. For purposes of Section 19 of the OSH Act, Executive Order 12196 and the Basic Program Elements at 29 CFR Part 1960, the definition of “agency” does not include USPS. This means that USPS is subject to enforcement and penalty provisions of the OSHA Act similar to private employers. Today’s final rule revises the basic program element at 29 CFR 1960.2(b) to make clear that the definition of “agency” does not include USPS.

6. Federal agency abatement verification.

Under the OSH Act, OSHA inspects workplaces to determine whether employers are complying with OSHA standards and other statutory and regulatory requirements. In addition, OSHA inspections are conducted to ensure that the hazards are abated. The citation references the alleged violation, notes the proposed penalty, and indicates the date by which the violation is to be abated. Abatement means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by OSHA during an inspection.

Employers are required to verify in writing that they have abated cited conditions, in accordance with 29 CFR 1903.19. Section 1903.19(a) provides that the scope of the regulation applies to “employers” who receive a citation for a violation of the OSH Act.

The Federal agency equivalent of a “citation” is the Notice of Unsafe or Unhealthful Working Conditions (OSHA Notice). The basic program element at Section 1960.30 addresses the abatement of unsafe or unhealthful working conditions. Among other things, the basic program element provides that when an OSHA Notice is issued, abatement must be within the time set forth in the Notice, or in accordance with an established abatement plan.

The basic program elements do not include procedures for abatement verification when a Federal agency receives an OSHA Notice. In the past, OSHA’s written policy has been for Federal agencies to follow the abatement verification procedures for the private sector, (See OSHA Instruction CPL 02-00-150– Field Operations Manual, Chapter 13, Federal Agency Field Activities). Today’s final rule clarifies that the abatement verification procedures in 29 CFR 1903.19 are generally applicable to Federal agencies.

OSHA notes that several of the provisions in Section 1903.19 make reference to abatement verification procedures that are only applicable to private sector employers. For

example, Section 1903.19(b)(2)(ii), addresses abatement dates for contested citation items for which the Occupational Safety and Health Review Commission (Commission), has issued a final order affirming a violation. Because Federal agencies do not receive citations, and are not able to contest OSHA Notices before the Commission, Section 1903.19(b)(2)(ii) would not be applicable to Federal agencies.

Other provisions in Section 1903.19 are general and address the procedures used by OSHA to ensure abatement. Specifically, paragraphs (c) through (i) in Section 1903.19 include private sector abatement verification provisions that are applicable to Federal agencies. When evaluating the procedures in paragraphs (c) through (i), Federal agencies should substitute the word “employer” with “Federal agency,” and “citation” with “OSHA Notice.”

Today’s final rule amends the basic program element at 29 CFR 1960.30 by adding paragraph (f) and makes clear that the abatement verification procedures in Section 1903.19 are generally applicable to Federal agencies.

7. Access to Medical Records.

In the November 26, 2004 final rule revising Federal agency occupational injury and illness recordkeeping requirements, OSHA inadvertently deleted Section 1960.66(f). This section provided that retention and access to employee records must be in accordance with OSHA’s regulation at 29 CFR 1910.1020, Access to employee exposure and medical records. Today’s final rule reestablishes the former basic program element at 29 CFR 1960.66(f). The revised basic program element states: “Retention and access of employee exposure and medical records shall be in accordance with 29 CFR 1910.1020.”

8. Financial management.

Section 1960.7(a) requires the head of each Federal agency to ensure that the agency budget submission includes appropriate financial and other resources to effectively implement and administer the agency’s occupational safety and health program. Section 1960.7(b), provides that the Designated Safety and Health Official, management officials in charge of each establishment, safety and health officials at all appropriate levels, and other management officials are responsible for planning, requesting resources, implementing, and evaluating the occupational safety and health program budget in accordance with the regulations of the Office

of Management and Budget Circular A-11 (sections 13.2(f) and 13.5(f)), and other relevant documents.

The two sections referenced in 29 CFR 1960.7(b) are from the 1981 version of OMB Circular A-11. Section 13.2(f) states: “Agencies will assure that estimates reflect full consideration of the administration’s goals and responsibilities to provide safe and healthful work places for Federal employees in accordance with the provisions of Executive Order No. 12196 and the related Safety and Health Provisions for Federal Employees of the Secretary of Labor, (CFR Title 29, Chapter XVII, Part 1960).”

Section 13.5(f) states: “Estimates for the design and construction of Federal facilities and buildings, and for the purchase of equipment, will include amounts required to insure safe and healthful workplaces for Federal employees consistent with the standards promulgated under section 19 of the Occupational Safety and Health Act of 1970. Agencies will assure that estimates for capital improvement will reflect full consideration of the expense of insuring that existing facilities provide safe and healthful places and conditions of employment consistent with these standards.”

Over the years, OMB Circular A-11 has been revised several times. The revisions have resulted in the deletion of Section 13.5(f) and the transfer of some language from Section 13.2(f) to Section 33.1. In order to reduce confusion, and with the realization that the Circular may be revised in the future, OSHA has decided to delete the reference to OMB Circular A-11 in 29 CFR 1960.7(b). OSHA believes that Federal agencies should review and comply with all relevant OMB regulations and documents when evaluating their occupational safety and health budget.

X. The Current Rulemaking.

The Federal Advisory Council on Occupational Safety and Health (FACOSH) was established by Executive Order 11612 to advise the Secretary of Labor on matters relating to the occupational safety and health of Federal employees.

During its March 11, 2007 meeting, FACOSH voted to establish a subcommittee to determine how best to collect Federal employee injury and illness recordkeeping information. The subcommittee held three meetings on May 31, June 14, and July 31, 2007, to discuss proposed changes to the Federal agency recordkeeping requirements in 29 CFR 1960, Subpart I.

The subcommittee was comprised of six voting members, with equal representation from management and labor. The six voting members included representatives from the Department of Defense, Department of Homeland Security, National Aeronautics and Space Administration, Seafarers International Union, American Federation of Government Employees, and American Postal Service Union. In addition, there were several representatives from various Federal agencies who actively participated in the meeting discussions, and offered special technical expertise and perspective, including representatives from the Department of Labor (including BLS), Transportation Safety Administration, NIOSH, and the Smithsonian Institution.

Participants at the subcommittee meetings supported OSHA's collection of injury and illness records from Federal agencies; encouraged OSHA to develop a variety of options for collecting the data; and recommended that OSHA provide a mechanism for agencies to analyze their injury and illness data. The subcommittee also encouraged OSHA to publicize their intentions and to assist agencies who could not currently aggregate their own data. The subcommittee recommendations were presented to the full Council during an October 11, 2007 FACOSH meeting.

OSHA responded to the FACOSH recommendations by writing to Federal agencies, advising them of the database project, and soliciting a list of Federal agency establishments. OSHA has developed three options for agencies to submit their injury and illness data, with one option offering real-time data entry and analysis capability.

XI. Administrative Procedure Act.

This rule relates to matters of Federal agency management and personnel and, therefore, is exempt from the usual Administrative Procedure Act requirements for prior notice and comment and a 30-day delay in effective date, (See 5 U.S.C. 553(a)(2) and (d)).

The Paperwork Reduction Act (44 U.S.C. 3501 et seq.) does not apply because this rulemaking, which applies only to Federal agencies, does not create or modify information collection requirements that require the approval of the Office of Management and Budget. Additionally, the Department of Labor has determined that this rulemaking is a nonmajor rule under the Congressional Review Act (5 U.S.C. Chapter 8), and will submit a report thereon to the U.S. Senate, House of Representatives, and General Accounting Office in accordance with

that law at the same time this rulemaking document is sent to the Office of the Federal Register for publication.

Because this rulemaking applies only to Federal agencies, the Department of Labor certifies pursuant to the Regulatory Flexibility Act, (5 U.S.C. 605(b)) that this final rule will not have a significant impact on a substantial number of small entities. Similarly, the requirements of the Unfunded Mandates Reform Act of 1995 and Executive Order 13132 addressing “Federalism” do not apply. The Department of Labor has also determined that this is not a “significant regulatory action” under Section 3(f) of Executive Order 12866, “Regulatory Planning and Review,” and that it relates to a matter of agency organization, management, or personnel. See Executive Order 12866; Section 3(d)(3).

XII. Summary and Explanation of the Final Rule, 29 CFR Part 1960.66(b).

As described below.

List of Subjects in 29 CFR Part 1960.

Government employees, Occupational safety and health, Reporting and recordkeeping requirements.

Authority and Signature.

This document was prepared under the direction of David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor. 200 Constitution Avenue, NW., Washington, D.C. 20210. Accordingly, pursuant to sections 19 and 24 of the Occupational Safety and Health Act of 1970 (84 Stat. 1609, 1614; 29 U.S.C. 668, 673), 5 U.S.C. 553, Secretary of Labor's Order No. 1-2012 (77 FR 3912) and Executive Order 12196, the Department amends 29 CFR part 1960 as set forth below.

Signed at Washington, DC, on July 26, 2013.

David Michaels,
Assistant Secretary of Labor for Occupational Safety and Health.

For the reasons stated in the preamble, 29 CFR Part 1960 is amended to read as follows:

**PART 1960 – BASIC PROGRAM ELEMENTS FOR FEDERAL EMPLOYEE
OCCUPATIONAL SAFETY AND HEALTH PROGRAMS AND OTHER RELATED
MATTERS**

1. The authority citation for Part 1960 continues to read as follows:

Authority: Sections 19 and 24 of the Occupational Safety and Health Act of 1970 (84 Stat. 1609, 1614; 29 U.S.C. 668, 673, 5 U.S.C. 553, Secretary of Labor’s Order No. 1-90 (55 FR 9033), and Executive Order 12196.

2. Amend § 1960.2 by revising paragraph (b) to read as follows:

§ 1960.2 Definitions.

* * * * *

(b) The term agency for the purposes of this part means an Executive Department, as defined in 5 U.S.C. 101, or any employing unit of authority of the Executive Branch of the Government. For the purposes of this part to the extent it implements section 19 of the Act, the term agency does not include the United States Postal Service. By agreement between the Secretary of Labor and the head of an agency of the Legislative or Judicial Branches of the Government, these regulations may be applicable to such agencies.

* * * * *

3. Amend § 1960.7 by revising paragraph (b) to read as follows:

§ 1960.7 Financial management.

* * * * *

(b) The Designated Agency Safety and Health Official, management officials in charge of each establishment, safety and health officials at all appropriate levels, and other management officials shall be responsible for planning, requesting resources, implementing, and evaluating the occupational safety and health program budget in accordance with all relevant Office of Management and Budget regulations and documents.

* * * * *

4. Amend § 1960.30 by adding paragraph (f) to read as follows:

§ 1960.30 Abatement of unsafe or unhealthful working conditions.

* * * * *

(f) The procedures OSHA will use to verify Federal agency abatement are included in the private sector guidelines at 29 CFR 1903.19.

* * * * *

5. Amend § 1960.66 by adding paragraph (f) to read as follows:

§1960.66 Purpose, scope and general provisions.

* * * * *

(f) Retention and access of employee exposure and medical records shall be in accordance with 29 CFR 1910.1020.

* * * * *

6. Amend § 1960.71 by revising paragraphs (a)(1) and (b) to read as follows:

§ 1960.71 Agency annual reports.

(a)***

(1) Each agency must submit to the Secretary by May 1 of each year a report describing the agency's occupational safety and health program of the previous calendar year and objectives for the current fiscal year. The report shall include a summary of the agency's self-evaluation finding as required by § 1960.78(b).

* * * * *

(b) The Secretary will submit to the President by January 1 of each year a summary report of the status of the occupational safety and health of Federal employees based on agency reports, evaluations of individual agency progress and problems in correcting unsafe or unhealthful working conditions, and recommendations for improving their performance.

7. Add new § 1960.72 to read as follows:

§ 1960.72 Reporting Federal Agency Injury and Illness Information.

(a) Each agency must submit to the Secretary by May 1 of each year all information included on the agency's previous calendar year's occupational injury and illness recordkeeping forms. The information submitted must include all data entered on the OSHA Form 300, Log of Work-Related Injuries and Illnesses (or equivalent); OSHA Form 301, Injury and Illness Incident Report (or equivalent); and OSHA Form 300A, Summary of Work-Related Injuries and Illnesses (or equivalent).

(b) The Secretary must provide each agency by January 15 of each year with the format and guidelines for electronically submitting the agency's occupational injury and illness recordkeeping information.

(c) Each agency must submit to the Secretary by May 1, 2014, a list of all establishments. The list must include information about the department/agency affiliation, NAICS code, a street address, city, state and zip code. Federal agencies are also responsible for updating their list of establishments by May 1 of each year when they submit the annual report to the Secretary required by Section 1960.71(a)(1).

* * * * *

8. Add new § 1960.73 to read as follows:

§ 1960.73 Federal agency injury and illness recordkeeping forms.

(a) When filling out the OSHA Form 300 or equivalent, each agency must enter the employee's OPM job series number and job title in Column (c).

(b) When recording the injuries and illnesses of uncompensated volunteers, each agency must enter a "V" before the OPM job series number in Column (c) of the OSH Form 300 log or equivalent.

(c) Each agency must calculate the total number of hours worked by uncompensated volunteers.

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